

Notice of Allowability

Application No.

10/612,515

Examiner

MELANIE TYSON

Applicant(s)

STONE ET AL.

Art Unit

3773

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment received 01 September 2009.
2. ☒ The allowed claim(s) is/are 1-9,19,20,23,24,39,40,44,45,47-49,51,53,55,58-61 and 65.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 12/11/09.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/Melanie Tyson/
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773

Election/Restrictions

Claims 1, 19, and 47 are allowable. The restriction requirement between species, as set forth in the Office action mailed on 29 June 2006, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.**

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brian Hollis on 11 December 2009.

The application has been amended as follows:

Abstract (line 4): ...a suture engaging portion [[adopted]] adapted to be...

Specification (line 2 of paragraph 0007): ...having a bone engaging portion such as screw threads, and a non-threaded suture engaging section...

Claim 19 (line 21):...through said radially outermost [[annular]] surface...

Claims 43 and 56: cancel claims.

Claim 47 (lines 11, 15, 16, 18, 20, and 21-24): ...engaging axis; and...[[said]] a first eyelet along a first axis...[[said]] an outermost annular surface of the suture engaging portion...from [[said]] a second eyelet.....from said [[terminal proximal]] end surface...axis. [[: and an access to a first portion of said suture passage extending through a side wall of said suture engaging portion configured to allow access to said suture passage through said side wall.]]

EXAMINER'S STATEMENT OF REASONS FOR ALLOWANCE

Allowable Subject Matter

Claims 1-9, 19, 20, 23, 24, 39, 40, 43-45, 47-49, 51, 53, 55, 56, 58-61, and 65 are allowed. The following is an examiner's statement of reasons for allowance: The prior art fails to disclose or suggest in combination with other limitations in the claims, first and second eyelets in a proximal face of a non-threaded suture engaging section, a first suture passage extending from the first eyelet along a first axis, and a second suture passage extending through an outermost surface of the suture engaging section along a second axis that is generally perpendicular to the bone [anatomical] engaging axis and interconnects the first suture passage and a third suture passage extending from the second eyelet along a third axis, wherein the first and third axes both diverge

from each other from a terminal proximal end of the suture anchor and both form exterior obtuse angles with the second axis.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/612,515

Page 5

Art Unit: 3773

Melanie Tyson /M. T./
Examiner, Art Unit 3773
December 11, 2009

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773